



GUIDANCE AND PROCEDURES FOR THE SHORT LINE RAILROAD PRESERVATION GRANT PROGRAM

FY2020



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BACKGROUND

On July 1, 1976, the Governor designated the Tennessee Department of Transportation (TDOT) as the state agency with the authority and administrative jurisdiction “to promote and develop efficient rail transportation services for the state.” This action was triggered by the Federal Railroad Revitalization and Regulatory Reform Act of 1976, also known as the “Four-R Act.” TDOT submitted the first Tennessee Rail Plan in March 1978 to the Federal Railroad Administration.

The Staggers Rail Act of 1980 deregulated the railroad industry, removing many of the previous regulatory prohibitions related to abandonment of light density rail lines. Following deregulation, Class I railroads were able to abandon unprofitable or redundant branch lines. Across the country abandonment of branch rail lines threatened to disrupt the economies of local communities. In Tennessee, approximately 1,005 miles of rail lines in Tennessee were proposed for abandonment.

Prior to deregulation, the larger railroads had allowed unprofitable or low density branch lines to deteriorate. At the time that these branch lines came under new ownership, they needed considerable track and bridge improvements due to deferred maintenance. In response to this situation, railroad authorities (“Authorities”) were formed across the state of Tennessee to support rail lines threatened with abandonment by partnering with short line railroad operators (“Operators”). In 1987, the General Assembly dedicated the bulk of an already-existing tax on fuels used for aviation, railways, and water carriers to the Transportation Equity Trust Fund, and TDOT was charged with administering the fund for the benefit of each mode.

Program Purpose

The purpose of Tennessee’s Short Line Railroad Preservation Grant Program is to preserve rail service to local communities and expand rail connectivity to sites along existing rail corridors. The focus of the program is on facilitating the efficient and economical movement of freight within Tennessee by strengthening the network of short line railroads in the state.

Eligible Grant Recipients

Grants from the Transportation Equity Trust Fund are provided to Authorities established pursuant to state statute in order to preserve and maintain essential rail transportation. TDOT requires Authorities to be actively involved in the management of grant funds.

Required Grant Signatories

In addition to TDOT and the Authority, TDOT requires the local Operator and the owner of the railroad track and right-of-way to sign grant contracts, establishing a multi-party agreement in which each party has distinct responsibilities. In some cases, the track and right-of-way are owned by the Authority, while in other cases these assets are owned by the Operator or by a third party.

Eligible Grant Expenses

- Capital projects on track that actively serves rail customers located on the line
- Engineering work associated with capital projects (up to 10% of total project cost)
- Non-engineering construction administration by a third party contractor (up to 2% of construction cost, procured in accordance with Tenn. Code Ann. § 7-56-211)
- Annual audit (Note: In the past, some Authorities have been referenced within a county audit. TDOT requires either an audit specifically of the Authority itself or a letter from the Comptroller indicating that the county audit satisfies the statutory requirement related to Authority audits);
- Loan payments, in cases where there is an agreement in place with TDOT prior to 2013 (Note: using more than 85% of an Authority’s allocation for loan repayment shall require approval by the Commissioner of TDOT)
- Railroad-highway at-grade crossings to be repaired must be public crossings that have been rated in “Fair” or “Poor” condition by TDOT rail inspectors

Ineligible Grant Expenses

- Railroad operating costs, indirect costs, and other internal administrative costs associated with administering grants
- Railroad-Highway at-grade crossing repairs rated in “Good” condition by TDOT rail inspectors
- Food, travel, entertainment, honoraria
- Repayment of debt incurred for accelerated projects (in the absence of an advance consent agreement with TDOT)
- Expenses incurred outside the effective dates of a contract
- Expenses that are outside the scope of a contract
- Contingency or miscellaneous fees for construction

Local Match

Projects will have a ninety percent (90%) State/ten percent (10%) Local funding split. The required ten percent (10%) Local cash match can come from the Authority, the Operator, and/or participating local governments.

Timeframe in which Eligible Expenses May Be Incurred

Eligible expenses must be incurred during the term of the contract. If engineering services are to be billed to the contract, the work performed by the engineer must be performed during the term of the contract, with timesheets subject to verification. The effective date of the contract, which will be indicated on the contract, will be no earlier than the date on which it is fully executed and approved. Contracts will have a standard term of eighteen (18) months. Longer contract terms may be requested depending on the nature of the project.

Application for Grant Funds

Authorities must submit the Application for Short Line Railroad Grant Funds by the deadline established by TDOT at the time an allocation of funds is announced. In the absence of an application by the deadline, an Authority’s allocation may be reallocated at the discretion of the Commissioner. Failure to apply for funds or inactivity on current contracts may merit an explanation as to why an Authority’s funds should not be reallocated.

1. One Project Information Form must be completed per discrete bridge or track rehabilitation project. Multiple crossing surface projects may be bundled together in a single Project Information Form.
2. Authorities are encouraged to select projects that are scalable in the event that engineering reveals that construction costs will be higher than expected.
3. In the event that construction costs exceed the original estimate provided in this application, the Authority shall either reduce the scope of the project to fit within the budget, secure additional funds to complete the project, or discontinue the project. The Authority shall be obligated to repay TDOT for any expenses reimbursed on a project that is discontinued before completion.

Contracting and Procurement

1. Selection of Engineer: Authorities shall procure a qualified engineer to complete the design work related to the project, unless TDOT approves the project as a ‘No Plans’ project. The procurement shall be based on qualifications and experience, and the documentation for the procurement of the selected engineer shall be submitted to TDOT for approval prior to the Authority’s execution of its contract with the selected engineer.
2. Competitive Procurement of Construction Contractor: The Authority must provide the bid package to TDOT for approval and an Engineer’s estimate of the cost of the project.
 - a. Upon receipt of written approval from TDOT, the Authority may then proceed with its required advertisement in order to promote open competition for the project. The Operator shall advertise the project for bids in accordance with any applicable county requirements and shall provide project information to TDOT at least three (3) weeks prior to the bid

- opening for posting on TDOT's website. The Operator also may advertise the project elsewhere, such as posting the project on AXIS Track Report (<http://axistrackreport.com/>), at the Operator's discretion.
- b. After bids are received, the bid results and contractor selection will be provided to TDOT for approval, with the contract to be awarded to the lowest responsive and responsible bidder. Detailed information about the outcome of the bidding process must be provided to TDOT for posting on TDOT's website.
 - c. After TDOT approves the bid process and the selected contractor or supplier, TDOT will then issue a Notice to Proceed to Construction. Upon receiving this Notice to Proceed from TDOT, the Authority may then enter into a contract with the selected contractor/supplier.
3. Labor Provided by Operator at a Negotiated Rate: If labor associated with the project is to be provided by the Operator per Tenn. Code Ann. § 7-56-211(c), advance approval from TDOT is required.
- a. When the Operator provides labor at a negotiated rate, all other costs of rehabilitation work, including but not limited to materials and equipment, must be put out to a competitive bidding process approved by TDOT. If the Operator already owns the equipment necessary, such equipment may be used in lieu of competitively bid equipment; however, costs associated with the use of such equipment are exempt from reimbursement.
 - b. Prior to beginning work, the Authority must provide TDOT with a detailed description of any work to be performed by the Operator directly and an Engineer's estimate of the amount and rate for Operator labor needed to execute the project.
 - c. Upon receipt of written approval from TDOT, the Authority then may enter an agreement with the Operator and/or any subcontractor(s) to perform the specified work and issue a Notice to Proceed.
 - d. The Operator shall invoice the Authority for the cost of the work performed and shall certify that the labor invoiced is limited to labor costs incurred while executing the agreed-upon scope of work and does not include labor charges for performance of any work outside the scope.
 - e. The Authority shall invoice TDOT for work performed by the Operator as described below. TDOT may audit Operator timesheets during the course of grantee monitoring.
4. Competitive Procurement of Materials, Equipment, and All Other Costs: In accordance with Tenn. Code Ann. 7-56-211, procurement of goods and services with a cost over \$500 requires advertising for bids. Goods and services with a cost of \$500 or less shall be competitively procured in a manner allowed by county procurement law.

Permits

Authorities are responsible for obtaining and complying with any necessary permits for the work.

Traffic Control

Authorities are responsible for coordinating with the appropriate road authority to implement any necessary traffic control at public railroad crossings.

Change Orders or Plan Revisions

Designers should be diligent and exercise due care in developing plans. TDOT recognizes that it is unrealistic to expect all projects be built without deviating from the project plans. There are many peculiarities (e.g., unforeseen site conditions, utility conflicts, changes in the geology, etc.) that can arise during construction, and virtually every project should expect some changes. The Project Engineer or other designated person by the Authority in responsible charge of construction should judge the adequacy of project designs and respond to needed changes.

Minor changes in the estimated quantities of bid items are acceptable, as long as no increase in the total grant contract amount is required and the changes are documented for final inspection by TDOT. Any other changes to the original contract or plans must be submitted to TDOT for funding eligibility approval prior to proceeding.

Plans revisions shall be documented by the following information:

1. Revision Number – Revisions shall be numbered consecutively throughout the life of the project.
2. Revision Date – The effective date of the revision.
3. Brief Description – A brief description as to the basis of the revision.

Invoicing

1. The Authority shall invoice TDOT no more often than monthly.
2. The Authority may submit invoices for interim payments during the progress of the contract; provided, however, that such interim payments may be approved only up to the maximum of eighty percent (80%) of the State's maximum liability on the contract. Any remaining reimbursable costs must be submitted on the final invoice.
3. The Authority shall refrain from invoicing the final twenty percent (20%) of the contract until final inspection of the work is requested by the Authority. Payment of the final invoice will be withheld until TDOT completes its final inspection as detailed below.
4. Invoices must include documentation of the work that has been performed by the contractor and a copy of the invoice received from the contractor. TDOT may require inspection prior to payment. TDOT will have a consulting firm with expertise in construction inspection on call to complete such inspections on an as-needed basis.
5. When submitting an invoice, the Authority shall document one hundred percent (100%) of the cost incurred by providing an invoice from the contractor and a description of the work performed. The Authority shall request payment for the ninety percent (90%) State share of the cost incurred.

Final Inspection and Contract Closeout

1. After the Authority has completed the project, the Authority must request a final inspection by TDOT. TDOT and/or its consultant will conduct an inspection to confirm that the work was performed in accordance with plans and specifications, including legal disposal of ties if applicable.
2. After the final inspection is complete to TDOT's satisfaction, the Authority's final invoice for the final twenty percent (20%) of the contract may be paid.

Reporting Requirements

Report Type	Source of the Requirement	Reporting Period	Due Date for Report	Required Elements	Report is to be Submitted to
Operator's Annual Report	Contract Section E.7.	Calendar Year	April 1 of each year for five years following completion of any grant contract.	<ul style="list-style-type: none"> • Verifiable accounting of Operator's gross revenues • Expenditures for Maintenance of Way • Carload data • Rail service users • Commodities transported 	<ul style="list-style-type: none"> • Operator submits report to Authority • Authority (Grantee) submits report to TDOT
Authority's Annual Report	Tenn. Code Ann. § 7-56-209 or Tenn. Code Ann. Title 64, Chapter 2	State fiscal year	Due Annually. The Authority's audit on operations is due no later than the close of the succeeding year.	<ul style="list-style-type: none"> • Authority's Income • Expenditures • Statements from Operators • Accomplishments During the Period • Plans for the upcoming year • Plans for subsequent years 	<ul style="list-style-type: none"> • Authority submits report to TDOT • Authority submits report to the governing body of each county and city within the Authority.
Authority's Annual Audit	Tenn. Code Ann. 7-56-209 or Tenn. Code Ann. Title 64, Chapter 2; Contract Section D.19.		Due Annually. Must be completed no later than the close of the succeeding year.	Audit of the Authority's operations that meets requirements of TCA 4-3-304(4).	Comptroller of the Treasury
Grantee's Contract-Specific Annual & Final Report	Contract Section D.18	State fiscal year	<ul style="list-style-type: none"> • For grant contracts \geq one year the Annual report is due within three months after each term year of the contract. • The Final report is due within three months after the closure of the contract and will take the place of the annual report for the final year. 	<ul style="list-style-type: none"> • Grantee's name • Grant Contract's Edison identification number, Term, and total amount • Narrative section that describes the program's goals, outcomes, successes and setbacks, whether the Grantee used benchmarks or indicators to determine progress, and whether any proposed activities were not completed • Any other relevant details requested by TDOT 	<ul style="list-style-type: none"> • Authority submits report to TDOT